IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6846 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GALABHAI MANJIBHAI DAMOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6846 of 1999

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

Ms. Archana Raval AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 02/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Mehul S. Shah for the petitioner; Ms. Raval learned AGP for the respondents. According to the facts of the present case, the petitioner was appointed in respondent no.3 school on 2nd June, 1967 and thereafter, the petitioner retired as a Principal from the respondent school on 31st March, 1993; after his retirement, he made representation before the respondents for payment of pension through teachers' union to which reply was given by the respondents to the union on 2nd December, 1994 and 20th March, 1996 that they shall have to wait upto the decision of this court in respect of the similar matter pending before this court. According to the learned advocate Mr. Shah, special civil application no. 3635 of 1982 was decided by this court with a direction to the State Government to extend the benefit of pension to the teachers of the aided private primary schools in the State. He also submitted that the said order passed by this Court in aforesaid petition was challenged by the State before the Division Bench of this Court by filing Letters Patent Appeal No. 788 of 1998 and the Division Bench of this Court confirmed the order passed by the learned Single Judge of this Court in SCA No. 3635 of 1982. He submitted that the said LPA was decided by the Division bench of this Court on 31st July, 2001 and the decision is reported in 2001 (3) GLH 659. Relying upon the observations made by the Division Bench of this Court in the aforesaid matter, it was submitted by him that in view of that, now the respondents are required to be directed to extend pensionary benefits to the petitioner. He has placed reliance upon the following observations made by the Division Bench of this Court in the aforesaid matter:

> " We, therefore, find that the grounds, on which the judgment of the learned Single Judge has been assailed, are not tenable and we have no hesitation in holing that the teachers in the non government private but recognised and aided institutions imparting primary education are also entitled to the same pensionary benefits as are admissible to the teachers of identical institutions working in the colleges, higher secondary schools and secondary schools. The State, being a welfare State, is not supposed to make any distinction or give a differential treatment by creating a class within a class and the teachers of the private institution imparting primary education which are recognized and aided by the Government are also entitled to pension."

Relying upon the aforesaid observations made by the Division Bench of this Court, it was submitted by the learned advocate Mr. Shah that the respondent school wherein the petitioner was working is an aided private primary school recognized by the Government and, therefore, the decision of the learned Single Judge of this Court in the aforesaid petition confirmed by the Division Bench of this Court in the aforesaid Letters Patent Appeal is fully applicable to the case of the petitioner. It was also submitted by him that the Division Bench of this Court has, while upholding the order passed by the learned Single Judge of this Court, directed the State Government to frame an appropriate scheme for the purpose of giving pensionary benefits to the teachers of the primary schools aided and recognized by the Government and in case of retired teachers, the amount of pension be fixed on notional basis from the date of the commencement of the scheme. He submitted that such a scheme was directed to be framed by the Government within a period of three months from the date of receipt of certified copy of the said order as may be served by either of the parties or through the Court and the same was also ordered to be appropriately notified, acted upon and given effect to and due benefits were ordered to be given to the retired teachers also who are found to be entitled for pension. Learned advocate Mr. Shah submitted that the petitioner herein has already retired from service on 31st March, 1993 and, therefore, according to the scheme, the petitioner is entitled for the notional benefit of pension and, therefore, some suitable directions may be issued to the State Government so that the State Government may consider the case of the petitioner in light of the aforesaid decision of this Court and grant benefit of pension to the petitioner as per the scheme framed by the Government and in case if the scheme is yet not framed by the State Government, till this date, then the Government may be directed for framing such scheme in consonance with the directions issued by the Division Bench of this Court in the aforesaid decision within some reasonable period and thereafter consider the case of the petitioner for benefit of notional pension within some reasonable period after such scheme is framed.

Considering the submissions made by the learned advocates for the parties and also considering the decision of the Division Bench of this Court in the aforesaid appeal, I am of the view that the case of the present petitioner is squarely covered by the decision of the Division Bench of this Court in aforesaid LPA in case of State of Gujarat v/s. Kusumben E.Borasada reported in

2001 (3) GLH 659. It is not the case of the respondents that the respondent No.3 school is not the aided private primary school recognized by the Government wherein the petitioner was working. Therefore, considering the facts of the present case and also considering the decision of the Division Bench of this Court as aforesaid, I am of the opinion that it would be just and proper and would also met ends of justice if some suitable directions are issued to the State Government to consider the case of the petitioner as per the decision of the Division Bench of this Court ad to pay pensionary benefits to the petitioner as per the scheme framed by the Government within some reasonable period. The Government was directed by the Division Bench of this Court to frame the scheme within the period of three months from the date of receipt of certified coypu of the said order. However, if the Government has yet not framed the Scheme in consonance with the directions of the Division Bench of this Court, then, it would be just and proper to direct the State Government to frame such a scheme within some reasonable period and thereafter to consider the case of the petitioner as per the said scheme.

Therefore, State Government is directed to consider the case of the petitioner for pension in view of the observations made by the Division Bench of this Court in case of State of Gujarat v/s. Kusumben E.Borasada reported in 2001 (3) GLH 659, as per the scheme framed by the State Government within the period of one month from the date of receipt of copy of this order. In case if the scheme has not been framed by the State Government till this date as per the directions of the Division Bench of this Court, State Government is first directed to frame such scheme within the period of two months from the date of receipt of copy of this order and thereafter the State Government shall consider the case of the petitioner for pension as per the said scheme within one month from the date of framing of such scheme if not framed so far till this date and to pay pensionary benefits to the petitioner without any delay. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.2.9.2003 (H.K. Rathod,J.)

Vyas